

<sup>2</sup> The Board notes that counsel did not appeal from an October 31, 2018 decision which denied a wage-loss compensation claim. Therefore, the Board will not exercise jurisdiction over that issue in the present appeal.

Pursuant to the Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>4</sup>

### **ISSUE**

The issue is whether appellant has met his burden of proof to expand the acceptance of his claim to include additional left knee, left wrist, and left shoulder conditions causally related to the accepted July 18, 2017 employment injury.

### **FACTUAL HISTORY**

On July 20, 2017 appellant, then a 61-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 18, 2017 his left knee gave out and he fell, causing him to hit his shoulder on the carrier case behind him. He stopped work that day.

In a July 18, 2017 handwritten statement, appellant indicated that at approximately 8:30 a.m. that day he was casing mail and, as he turned to stack an empty tray, his left knee gave out causing him to fall and hit the carrier case with his left shoulder. He reported being in too much pain to continue working, that he could not lift his left arm, and that his left knee was painful at times.

T.T., a coworker, provided a statement dated July 18, 2017.

Appellant was treated in the emergency room on July 18, 2017 by Dr. Ping Wong, Board-certified in emergency medicine. Dr. Wong reported a history that appellant's left knee gave out at work causing him to fall on his left shoulder. Findings on examination revealed mild left trapezius tenderness, diffuse tenderness of the left shoulder and left knee, tenderness of the base of the first metacarpal, mild swelling of the left knee, and tenderness of the medial joint line. Dr. Wong diagnosed acute contusion of left shoulder, acute left knee sprain, and acute sprain of the left wrist. He prescribed a wrist splint, wrapped appellant's left knee with an ace bandage and knee immobilizer, and placed his shoulder in a sling.

A July 18, 2017 left shoulder x-ray revealed degenerative changes of the acromioclavicular (AC) joint with joint space narrowing and osteophyte formation and no acute bony abnormality. A left knee x-ray of even date revealed joint space narrowing with associated osteophytes due to osteoarthritis and no acute bony abnormality. A July 18, 2017 left wrist x-ray demonstrated no bony abnormality.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> The Board notes that following the November 28, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In an undated attending physician's report (Form CA-20) received by OWCP on August 25, 2017, Dr. Douglas J. Fauser, Board-certified in orthopedic surgery, recounted a history of left knee, left shoulder, and left wrist injuries. He diagnosed contusion of the left wrist, left knee meniscal tear, and possible left shoulder rotator cuff tear. Dr. Fauser checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment incident. A date of injury was not recorded. An unsigned progress note from Dr. Fauser's office indicated that on July 18, 2017 appellant's left knee buckled twice, he fell twice, and hit his left shoulder, wrist, and thumb.

In correspondence dated August 8, 2017, L.W., a health and resources management specialist at the employing establishment controverted the claim.

In a progress notes dated August 4, 2017, Laura Klein, a nurse practitioner in Dr. Fauser's office, noted the history of injury. She described examination findings of restricted range of motion of the left shoulder with a positive impingement sign, and medial and lateral joint line tenderness of the left knee. Ms. Klein indicated that a left wrist x-ray done that day demonstrated carpometacarpal (CMC) degenerative changes, that a left shoulder x-ray demonstrated acromioclavicular (AC) joint degenerative changes, and left knee x-rays revealed medial and lateral degenerative changes and more significant patellofemoral compartment degenerative changes. She noted that appellant continued to use a wrist splint, arm sling, and knee immobilizer. On October 19 and November 30, 2017 Ms. Klein noted that appellant's left wrist pain had subsided, but that he still had complaints of left shoulder and left knee pain. She again described examination findings.

By decision dated January 5, 2018, OWCP accepted a left shoulder contusion. By separate January 5, 2018 decision, however, it denied appellant's claim for left knee sprain, left wrist sprain, and contusion of the left wrist finding that the medical evidence of record was insufficient to establish that these conditions were causally related to the accepted July 18, 2017 employment incident.

On January 31, 2018 appellant requested a review of the written record by OWCP's Branch of Hearings and Review. On March 21, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

Subsequent to the January 5, 2018 decisions, appellant resubmitted treatment notes from August 4 to November 30, 2017 described above. All of those notes had been countersigned by Dr. Fauser.

In a statement dated January 25, 2018, appellant reiterated that he fell twice on July 18, 2017. He indicated that his left arm pain was too great to continue to work, so he returned to his station and reported his injury to his postmaster. Appellant wrote that he was then taken by ambulance to the emergency department.

In a January 31, 2018 progress note, Dr. Fauser reported appellant's complaints of left hand and wrist pain, left shoulder weakness and pain, and left knee instability. He noted a positive left shoulder impingement sign with restricted range of motion, and CMC grind and pain on left hand

examination. Dr. Fauser indicated that appellant was using a left knee immobilizer and described knee examination findings of marked weakness, joint line tenderness, and quadriceps and hamstring weakness. He noted that x-rays from “last year” revealed a possible chronic rotator cuff tear and arthritis of the left hand CMC joint.

A February 5, 2018 magnetic resonance imaging (MRI) scan of the left knee demonstrated a complex, horizontal oblique tear through the anterior horn and body of the lateral meniscus, communicating with the inferior articular surface, a small oblique tear involving the posterior horn of the medial meniscus, communicating with the inferior articular surface, lateral patellar facet and lateral compartment chondromalacia, small joint effusion, and degenerative changes without evidence of an intra-articular loose body.

In a progress note dated March 3, 2018, Dr. Fauser discussed the left knee MRI scan findings, noting medial and lateral meniscal tears and advanced arthritis of the patellofemoral joint. He described continued findings of left shoulder impingement with decreased range of motion, and right CMC joint pain. Left knee examination included a positive McMurray’s sign with patellofemoral crepitation, decreased range of motion, and joint line tenderness. Dr. Fauser recommended left knee arthroscopic surgery.

An April 26, 2018 MRI scan of the left shoulder demonstrated rotator cuff tendinosis and high-grade partial-thickness bursal surface tear versus focal non-retracted full-thickness tear of the anterior fibers of the supraspinatus tendon of indeterminate age, severe arthrosis of the ACL joint, mild osteoarthritis of the glenohumeral joint, and a suspected type I superior labral tear from anterior to posterior (SLAP) lesion.

On May 9, 2018 Dr. Fauser reviewed the left shoulder MRI scan findings with appellant and recommended rotator cuff reconstruction.

On May 25, 2018 appellant requested that his claim be expanded to include all injuries sustained on July 18, 2017.

On June 7, 2018 appellant was treated in follow-up by Ms. Klein for left knee, left shoulder, and left wrist/hand injuries. Ms. Klein indicated that they were awaiting approval for surgery of the left shoulder and left knee.

By decision dated June 19, 2018, an OWCP hearing representative affirmed the January 5, 2018 decision. He found that the medical evidence of record was insufficient to establish causal relationship between the additional claimed conditions and the accepted July 18, 2017 employment injury because the physicians of record failed to provide a sufficiently reasoned opinion explaining how the July 18, 2017 employment injury caused or contributed to additional conditions.

On August 30, 2018 appellant, through counsel, requested reconsideration. Counsel submitted an August 8, 2018 report in which Dr. Fauser noted that on July 18, 2017 appellant sustained a fall at work and injured his left knee, left shoulder, and left wrist. He advised that appellant had no left knee instability or issues with his left shoulder prior to his workplace fall and described the findings of the MRI scans. Dr. Fauser opined that the rotator cuff tear and tear of

the lateral and medial meniscus were directly related to the fall at work. He noted that appellant had complete instability of his left lower extremity, he could not stand or sit for long periods, he had significant restriction of his left arm, and he could not work. Dr. Fauser concluded that these injuries were directly related to his fall at work.

A telephonic hearing was held on August 14, 2018. Appellant testified regarding his injury and medical condition, maintaining that the medical evidence submitted supported his claim. He stated that when he returned to work in July 2017, he was using a cane.

On September 4, 2018 appellant, through counsel, requested reconsideration of the June 19, 2018 decision.

By decision dated November 28, 2018, OWCP denied modification of the June 19, 2018 decision.

### **LEGAL PRECEDENT**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>5</sup>

To establish causal relationship between a medical condition and any attendant disability claimed and the accepted employment injury, the employee must submit rationalized medical opinion evidence.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional left knee, left wrist, and left shoulder conditions causally related to the accepted July 18, 2017 employment injury.

OWCP accepted that appellant sustained a contusion of the left shoulder due to a July 18, 2017 employment injury when his left knee gave out and he hit his left shoulder on a case. It denied expansion of his claim to include additional left knee, left wrist, and left shoulder conditions finding that the medical evidence of record was insufficient to meet his burden of proof to establish that these additional claimed conditions were causally related to the accepted employment injury.

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<sup>5</sup> *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>6</sup> *A.T.*, Docket No. 19-1608 (issued April 21, 2020).

<sup>7</sup> *Id.*

On July 18, 2017 appellant was treated in the emergency room by Dr. Wong who reported a history that appellant's left knee gave out at work causing him to fall. Dr. Wong noted positive physical examination findings and diagnosed acute contusion of the left shoulder, acute left knee sprain, and acute sprain of the left wrist. However, he did not provide a clear narrative as to the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>8</sup> The Board finds that Dr. Wong's report is insufficient to establish that appellant sustained additional conditions on July 18, 2017.<sup>9</sup>

On an undated attending physician's report, Dr. Fauser diagnosed contusion of the left wrist, left knee meniscus, and possible left shoulder rotator cuff tear. He checked a form box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking a box marked "Yes" in response to a form report question regarding whether the claimant's condition or disability is related to the history given is of little probative value.<sup>10</sup> Dr. Fauser did not provide any rationale for his opinion. This report is, therefore, of diminished probative value and insufficient to establish that additional conditions should be accepted as employment related.<sup>11</sup>

In reports dated August 4, 2017 to May 9, 2018, Dr. Fauser noted the history of injury and described examination findings. However, he did not provide an opinion regarding the cause of any diagnosed condition in those reports. As noted, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>12</sup> It was not until August 8, 2018 that Dr. Fauser indicated that, as appellant had no instability of the left knee or issues with his left shoulder prior to the July 18, 2017 fall, the rotator cuff tear and tear of the lateral and medial menisci were directly related to the fall. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.<sup>13</sup> Moreover, Dr. Fauser did not discuss the significant degenerative changes seen on both the left shoulder MRI scan and that of the left knee. While he provided an affirmative opinion in his August 8, 2018 report that supported causal relationship, he did not provide a pathophysiological explanation as to how the accepted incident either caused or

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<sup>8</sup> See *R.T.*, Docket No. 19-1346 (issued December 4, 2019); *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>9</sup> *Id.*; see also *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>10</sup> *C.T.*, Docket No. 20-0020 (issued April 29, 2020); *M.R.*, Docket No. 17-1388 (issued November 2, 2017); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>11</sup> *Id.*

<sup>12</sup> *Supra* note 8.

<sup>13</sup> *J.F.*, Docket No. 19-1694 (issued March 18, 2020); *Kimper Lee*, 45 ECAB 565 (1994).

contributed to the additional diagnosed conditions.<sup>14</sup> The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part, as were shown on MRI scans in this case.<sup>15</sup> Medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases is required.<sup>16</sup> For these reasons the Board finds that Dr. Fauser's opinion is also insufficient to meet appellant's burden of proof.

Appellant also submitted a June 7, 2018 report from Ms. Klein, a nurse practitioner that was not co-signed by Dr. Fauser. Medical reports signed solely by a nurse practitioner are of no probative value, as a nurse practitioner is not considered a physician as defined under FECA and, therefore, is not competent to provide a medical opinion.<sup>17</sup>

Likewise, regarding the x-rays and MRI scans, the Board has explained that diagnostic tests standing alone lack probative value on the issue of causal relationship, as they do not address whether the employment incident caused a diagnosed condition.<sup>18</sup>

As the medical evidence of record is insufficient to establish causal relationship, the Board finds that appellant has not met his burden of proof to establish that his claim should be expanded to accept additional conditions.<sup>19</sup>

On appeal counsel asserts that causation was obvious, as this was a blunt force trauma injury, no further explanation was required, and that OWCP failed to give due deference to the findings of the attending physician. As discussed, the medical evidence of record is insufficient to meet appellant's burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>14</sup> See *K.W.*, Docket No. 19-1906 (issued April 1, 2020); *Victor J. Woodhams*, 41 ECAB 345 (1989); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>15</sup> *C.T.*, *supra* note 10.

<sup>16</sup> *Id.*

<sup>17</sup> *K.P.*, Docket No. 18-0350 (issued February 11, 2020); *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA); see *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

<sup>18</sup> *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

<sup>19</sup> See *A.T.*, *supra* note 6.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include additional left knee, left wrist, and left shoulder conditions causally related to the accepted July 18, 2017 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board